

REMARKS

Claims 103-138 are currently in the case. In the Office Action, the Examiner indicated that claims 103-138 are withdrawn as being directed to a non-elected invention. Applicants respectfully assert that claims 103-138 are directed to the subject matter previously elected by Applicants, and therefore, request reinstatement and examination of claims 103-138.

WITHDRAWAL OF CLAIMS 103-138 AS BEING DIRECTED TO A NON-ELECTED INVENTION

Claims 103-138 were withdrawn by the Examiner as being directed to a non-elected invention. Applicants respectfully assert that these claims are within the scope of subject matter already elected for examination. The subspecies elected by Applicants in Applicants' response filed May 23, 2005 included Figures 13, 15, 28A, and 44. Claims 103-138 are fully supported by these figures for the following reasons.

Regarding new claim 103, the claim recites "a superior articular surface shaped to articulate with an adjacent inferior articular surface," "an inferior articular surface shaped to articulate with an adjacent superior articular surface," and "a fixation member implantable in the first vertebra to secure the superior articular surface and the inferior articular surface to the first vertebra in any of a plurality of relative orientations between the superior and inferior articular surfaces." Such a superior articular surface is disclosed by Figure 15, reference numeral 27. Such an inferior articular surface is disclosed in Figure 13, reference numeral 23. Such a fixation member is disclosed by Figure 28A, reference numeral 200. These components of Figures 13, 15, and 28A meet all the limitations recited by claim 103. These and other components of the elected figures also meet the limitations of claims 104-112, which depend from claim 103. Accordingly, Applicants respectfully object to the withdrawal of claims 104 through 112, and request their reinstatement in the case.

Similarly, Figures 13, 15, 28A, and 44 disclose components that meet all the limitations recited by independent claim 113 and claims 114-120, which depend from it. The components disclosed by these figures disclose the structural elements needed to practice the methods of

independent claims 121 and 131, and by extension, claims 122-130 and 132-138, which depend from them. Thus, Applicants respectfully request reinstatement of claims 113-138 in the case.

CONCLUSION

Newly submitted claims 103-138 are believed to be within the scope of subject matter previously elected by Applicants for examination. These claims are believed to be allowable. If the Examiner sees any impediment to allowance of these claims, the Examiner is respectfully requested to contact the undersigned.

Dated this 11th day of October 2006.

Respectfully submitted,

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